

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Lauren Falk, Esq. (#316893)
Ava Issary, Esq. (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff TROY GRAY,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MARIA ELIAS and TROY GRAY, on behalf
of the general public as private attorney
general,

Plaintiff,

v.

ARYZTA, LLC, a California Limited Liability
Company; AEROTEK, INC., a Maryland
Corporation, and DOES 1-10, inclusive,

Case No.: 30-2020-01141103-CU-OE-CXC
Assigned for all Purposes to:
The Hon. Melissa R. McCormick
Dept.: CX104

**DECLARATION OF JAMES HAWKINS
IN SUPPORT OF MOTION TO
APPROVE PAGA SETTLEMENT**

Date:
Time: 10:00 a.m.
Dept.: CX104

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6
7
8
9

10
11
12
13

14
15
16
17
18
19
20
21
22
23
24
25

26
27
28

1 for Plaintiff to conduct a thorough analysis. With this information, Plaintiff and Defendant
2 agreed to mediate this action with mediator Tripper Ortman, a respected and experienced wage
3 and hour class action mediator. On December 18, 2023, the Parties participated in an all-day
4 private mediation with the mediator. During the mediation the Parties engaged in extensive,
5 arms-length negotiations. As a result of the Parties' efforts, the matter was fully resolved. The
6 Parties engaged in significant efforts to obtain the facts regarding the claims asserted, including
7 the exchange of detailed statistical data regarding weeks and pay periods worked by individuals
8 and Plaintiff. Thereafter, the parties worked together to finalize the terms of the long form
9 settlement agreement that is now placed before this Court for approval.

10 5. The claim before this court is the representative claim under PAGA on behalf of
11 the State of California for civil penalties pursuant to the PAGA. The parties have agreed to
12 settle this PAGA claim in its entirety after discovery and arm's length mediation. Defendants
13 filed and served its answer generally denying the claims therein and asserting affirmative
14 defenses. Defendants deny any wrongdoing and denies liability with respect to the matters
15 alleged in the Complaint and believes that it has valid defenses to all of Plaintiff's claims.
16 Defendants further contend that it has complied with all wage and hour laws applicable to the
17 employment of Plaintiff and other Allegedly Aggrieved Employees. To date, no court has made
18 any findings that Defendants engaged in any wrongdoing or in any wrongful conduct, or
19 otherwise acted improperly or in violation of any law, rule or regulation with respect to any of
20 the issues presented in this action.

21 6. The Agreement negotiated by the parties provides for Defendants to pay
22 \$250,000.00 as the Gross Settlement Amount ("GSA"). (Agreement at § 1.10). The "Net
23 Settlement Amount" ("NSA") is the amount remaining of the GSA minus the Court-approved
24 amounts awarded for the Attorneys Fees and Costs, Settlement Administration Fees,
25 Enhancement Award to Plaintiff (if any), and the LWDA Payment. (Agreement at § 1.15). The
26 Net Settlement Amount is estimated to be \$147,172.66.

27 7. The NSA is calculated as follows: (1) \$82,500.00 (i.e. 33% of the GSA) shall be
28 paid to Plaintiff's Counsel for payment of attorneys' fees; (2) Plaintiff's Counsel's litigation

1 expenses not to exceed \$7,000.00 (Plaintiff's counsel's litigation costs to date is \$6,077.34)
2 (Agreement at § 3.2.1); (3) \$10,000.00 Enhancement Award to the Plaintiff for Plaintiff's time
3 and risks in prosecuting this case and Plaintiff's service to the Allegedly Aggrieved Employees as
4 well as for Plaintiff's general release of Plaintiff's Released Claims; (4) Administration costs not
5 to exceed \$5,000.00 (The current estimated Administrator's fee is \$4,250.00). (Agreement at §§
6 3.2.2, 3.2.3). Any difference from these maximum amounts will be added to the Net Settlement
7 Amount.

8 8. The Gross Settlement Amount is subject to Court approval consistent with Labor
9 Code § 2699. Should the Net Settlement Amount increase or decrease, the amount to be
10 distributed shall be adjusted according to the changes made by the Court. Upon approval, the Net
11 Settlement Amount shall be allocated 75% (\$110,379.50) to the LWDA and 25% (\$36,793.16)
12 among Allegedly Aggrieved Employees. The share of the Net Settlement Amount to be
13 distributed to each Allegedly Aggrieved Employee is based on the number of his or her Pay
14 Periods worked in the PAGA Period in relation to the aggregate number of Pay Periods worked
15 by the Settlement Group during the PAGA Period. (Agreement at § 3.2.4.1). The 75/25 allocation
16 is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175
17 (2019). Each Allegedly Aggrieved Employee will receive approximately \$2.23 per pay period
18 worked.

19 9. The "Allegedly Aggrieved Employee" means "all persons who are employed or
20 have been employed as a non-exempt employee by Aspire Bakeries LLC and who worked at
21 Aspire Bakeries LLC's Stockton Bakery during the Covered Period." There are approximately
22 167 Aggrieved Employees at the time of mediation (Agreement at § 1.4). The PAGA Period or
23 "Covered Period" or "Release Period" means July 2, 2019 to the date of approval of the
24 Settlement by the Court or the last day of the pay period in which the number of PAGA Pay
25 Periods exceeds 16,500 by 10% (18,150 PAGA Periods), whichever is earlier. (Agreement at
26 §1.19).

27 10. Since the filing of the complaint, the Parties have exchanged extensive discovery
28 and engaged in numerous discussions regarding the factual and legal issues surrounding this case.

1 Throughout the litigation, Defendants produced voluminous pages of information and data,
2 including policies, handbooks, time and payroll records for the Allegedly Aggrieved Employees
3 reflecting time punches at the start of employees' shifts, and at the end of the shift, and meal
4 period punches as well as the applicable pay rates. Defendant also provided Plaintiff's personnel
5 file, records regarding documents identifying the non-exempt positions and information regarding
6 the number of employees holding these positions during the relevant time period. Defendants
7 also provided substantial information concerning the total number of Allegedly Aggrieved
8 Employees, the total number of pay periods at issue, and the applicable hourly rates and other
9 summary data related to the Allegedly Aggrieved Employees. The Parties have conducted
10 informed, good faith arms-length negotiations after conducting discovery and exchanging
11 extensive evidence and information about the claims and defenses of this lawsuit and engaged in
12 pre-mediation discussions, telephone conferences, and correspondence all aimed at settling their
13 dispute.

14 11. In preparation for the mediation, Plaintiff reviewed the entirety of the discovery
15 produced. The information had to be analyzed and processed to figure out the amount of
16 compensation Plaintiff contends are due to the Allegedly Aggrieved Employees. The evidence
17 and information gathered and reviewed by Plaintiff's counsel provided a factual framework for a
18 comprehensible and reliable damage model pertaining to all Settlement Allegedly Aggrieved
19 Employees. The mediation and subsequent negotiations included discussion and examination of
20 the Allegedly Aggrieved Employees and the Parties' respective positions on the legal and factual
21 issues raised in the Complaint. This was both a thorough and exhaustive process.

22 12. The Allegedly Aggrieved Employees recovery compares favorably to the
23 estimated amount of PAGA penalties. With the assistance of an expert, Plaintiff calculated that
24 the maximum amount of statutory PAGA civil penalties was potentially \$1,650,000.00 based on
25 16,500 PAGA pay periods multiplied by a maximum per pay period violation rate of \$100.¹
26 These were for penalties for violations of Labor Code §§ 226.7 and 512 (meal periods) at a 26%

27 ¹ Defendant further contends that that proper penalty rate for Plaintiff's claims is \$50 per pay period as laid out in
28 Labor Code § 558 which applies to alleged underpayment of wages.

1 pay period violation rate, penalties for violation of Labor Code §§ 226.7 and 512 (rest periods)
2 also valued at a 25% violation rate, penalties for violation of Labor Code § 226, penalties under
3 Labor Code §510/558 at a 60% violation rate assessment, and penalties for violation of Labor
4 Code §§ 201/202/203 for 167 former employees at approximately \$16,700. Importantly, however,
5 in total, these calculations were performed at the \$100 statutory rate for the penalties for the first
6 violation, and it is likely that any penalties awarded would be at a much lower rate given the facts
7 of this case. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount
8 than the maximum civil penalty if based on the facts and circumstances to do otherwise would
9 result in an award that is "unjust, arbitrary and oppressive or confiscatory." The maximum
10 exposure here would be approximately \$1,650,000.00 if the Court awarded 100% penalties for
11 each and every pay period at \$100 per pay period. Of course, these amounts would probably have
12 been reduced given the policies in place, and manageability issues, the issues of why someone
13 missed a meal break on any occasion or worked off the clock, and the issues of payment of meal
14 period premiums. Given the risks involved, a reasonable Risk Value reduction would put the
15 realistic possibility of recovery of penalties at approximately \$660,000.00 taking account for a
16 reasonable 40% chance of recovery. The risks include manageability issues, not prevailing on the
17 merits, prevailing on certain claims for certain periods, reduced penalty amounts awarded by the
18 trial Court, and reversal on appeal.

19 13. Defendants dispute that the penalties assessed by Plaintiff and his expert would
20 have been awarded. Further, it is Defendants' contention that PAGA penalties cannot be stacked,
21 and that at most just one PAGA penalty can be awarded to an aggrieved employee in any one pay
22 period. See Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties to be
23 measure by "each "each aggrieved employee per pay period"); *Smith v. Lux Retail North*
24 *America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the
25 "stacking of penalties"; "[f]or the single mistake of failing to include commissions in the
26 overtime base, plaintiff has asserted *five* (count them, five) separate labor code violations that
27 could lead to statutory penalties;" "is it plausible that we would really pile one penalty on another
28 for a single substantive wrong?"; noting that "no actual holding in any judicial decision has ever

1 blessed such stacking”). As such, and for this initial reason, Defendants contends that the
2 maximum potential recovery in this action is significantly lower than as stated by Plaintiff.

3 14. Further, Defendants argues that Plaintiff’s calculation of penalties as applicable to
4 any employee and for any pay period, is inflated for an additional reason. Defendants argues that
5 even were liability established, one does not reach the second-tier penalty for that violation unless
6 and until the employer is first cited for the violation, and that Defendants has never been cited.
7 *See Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*, 2009 WL
8 2448430 *1, *9 (S.D. Cal. 2009) (“For the purposes of subsequent violation penalties, the issue is
9 not whether [Defendants] willfully violated the Labor Code, but rather whether a court or
10 commissioner had notified it of any violation.”); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th
11 1157, 1209 (2008) (“[u]ntil the employer has been notified that it is violating a Labor Code
12 provision (whether or not the Commissioner or court chooses to impose penalties), the employer
13 cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’
14 subject to penalties” at a second tier); *Robinson v. Open Top Sightseeing San Francisco, LLC*,
15 No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying “initial”
16 penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing
17 Defendants was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*,
18 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a ‘subsequent
19 violation,’ an employer must have notice that it has violated the Labor Code”). As such,
20 Defendants contend that Plaintiff’s calculation are inflated not only because the “stack” penalties
21 for a single person during a single pay period, but because the penalties Plaintiff would award in
22 each instance are at an inapplicable (doubled) rate.

23 15. Defendant further argues that Plaintiff would still face significant practical
24 problems in aggregating any material exposure, as each violation would need to be proven as to
25 each person and for each period for which recovery is sought. Defendants argues that it is
26 unlikely that any significant number of current and former employees would travel to the venue of
27 a trial, stay at a hotel, prepare for and deliver testimony, all in exchange for – at most – 25% of
28 \$50 or \$100 (i.e. \$12.50 or \$25) for each pay period in which there was a violation. wage

statement penalties”). For purposes of section 226, “a good faith dispute presents when there is (1) uncertainty in the law; (2) representations by an authority that compliance was not required; or (3) an employer’s good faith mistaken belief grounded in a good faith dispute.” *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). “Mere recklessness” is not a basis for liability. *Pedroza*, 2012 WL 9506073, *5.

16. As a result of the mediation and the consideration of all facts, evidence, and arguments presented to Plaintiff and his counsel, the Parties agreed to settle this matter for \$250,000.00.

17. Defendants represented that the Allegedly Aggrieved Employees consisted of approximately 167 Aggrieved Employees who worked approximately 16,500 pay periods. The Gross Settlement Amount of \$250,000.00 constitutes approximately \$15.15 per pay period before deductions for fees, costs, enhancement award, and administration costs. The Gross Settlement Amount accounts for approximately 15.2% of the maximum potential recovery of \$1,650,000.00 given the reasonable applied risks factors. Upon approval, approximately \$110,379.50 will be sent to the State of California and approximately \$36,793.16 will be shared with the Allegedly Aggrieved Employees. This equates to approximately \$220.32 to each Allegedly Aggrieved Employee.

18. Plaintiff’s counsel balanced the terms of the proposed Settlement against the risk of litigation and probable outcome if this matter went at trial. Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement despite the questionable nature of the claims, Plaintiff’s counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the State, Plaintiff, and the Allegedly Aggrieved Employees. Counsel for the Parties investigated the applicable law as applied to the facts discovered regarding the claims of Plaintiff, Defendants’ defenses thereto and the damages claimed by Plaintiff on behalf of the Allegedly Aggrieved Employees.

1 19. I further believe that the consideration and terms set forth in the Settlement
2 Agreement are fair, reasonable, and adequate and are in the best interests of the Allegedly
3 Aggrieved Employees in light of all known facts and circumstances, including the various
4 defenses asserted by Defendants, and numerous potential appellate issues. In addition, the
5 prospect of a potential adverse summary judgment ruling at trial, the difficulties of complex
6 litigation, the lengthy process of establishing specific damages and various possible delays and
7 appeals, were also carefully considered in agreeing to the proposed Settlement.

8 20. The predominant claims in this action arise from alleged violations of California
9 law with respect to Defendants' failure to pay wages including overtime to the Allegedly
10 Aggrieved Employees for off the clock work performed by the Allegedly Aggrieved Employees
11 during meal and rest periods due to work interruptions and as a result of donning and doffing
12 required uniforms and gear. Plaintiff alleges that Defendants' practices do not provide proper
13 payment for missed meal periods, rest periods and overtime for off the clock work. Defendants
14 contends that it had compliant meal and rest period policies in place and such policies also
15 prohibited employees from working off the clock.

16 21. Defendants contends that Plaintiff and the Allegedly Aggrieved Employees were
17 properly compensated, and that they did not violate the Labor Code as to any of them.
18 Defendants asserted additional defenses to the PAGA claim as discussed above. These defenses
19 present a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought
20 may not be awarded

21 22. The Labor Code section 203 claim was uncertain given the defenses asserted for
22 the underlying claims as well as the lack of evidence of the "willfulness" prong necessary for a
23 Labor Code §203 claim. Plaintiff's counsel also recognized a risk of an adverse finding on given
24 Defendants' apparently compliant policies and procedures at the time of mediation. The labor
25 code section 226 claim was dependent on the underlying claims for failure to pay wages.

26 23. Further, Plaintiff's Counsel considered the fact that continued litigation would
27 likely take years and would be extremely expensive given the breadth and complexity of the
28 claims. In this case, post-trial and appellate proceedings are likely to occur, which will surely

1 drag the case far into the future even with a positive trial result. When facing a distant and unsure
2 resolution of the allegations in this action, the swift, sure and substantial Settlement is all the
3 more reasonable. Avoiding such costly litigation in favor of more immediate benefits to the
4 Allegedly Aggrieved Employees was a consideration favoring settlement. Given these realities, it
5 is highly likely that the future expense of this litigation, and its likely duration if the settlement is
6 not approved, would be significant and weigh heavily in favor of approval of this settlement.

7 24. Based on the Gross Settlement Amount of \$250,000.00, 75% of this amount will
8 be distributed to the LWDA and 25% to the Aggrieved Employees. As such, provides on average
9 each Allegedly Aggrieved Employee with approximately \$220.32. To the extent any amount for
10 Attorneys' Fees, Costs, Settlement Administration Costs or Enhancements are not awarded, the
11 difference in those amounts will be added to the Net Settlement Amount. This is a guaranteed
12 amount of money paid to Allegedly Aggrieved Employees now, rather than the continued risk of
13 further litigation and receiving no money sometime in the far future and after trial and appeals.

14 25. Plaintiff, as PAGA Representative, has provided extensive supporting documents
15 and assisted Counsel in developing information necessary to litigate and settle this case. Plaintiff
16 also conducted record review and consultation with counsel in preparation for discovery and
17 eventual mediation, and to assist in evaluating and proving the claims. The Settlement provides
18 for a Payment to be paid to the Plaintiff in the amount of \$10,000, subject to Court approval. The
19 purpose is to compensate the Plaintiff as PAGA Representative an additional enhanced payment,
20 taking into consideration the risks, time, effort and expenses incurred in coming forward to
21 provide invaluable information and negotiate and litigate this matter on behalf of all Allegedly
22 Aggrieved Employees who otherwise, would probably not file their own individual claims to
23 recover what may be relatively low damages. Further, the Payment of \$10,000.00 Plaintiff is a
24 very fair and justified as part of the Settlement based on the risks Plaintiff has taken and benefits
25 conferred upon the Settlement Group.

26 26. I have a great deal of experience in wage and hour class action litigation. I have
27 obtained certification of several classes, I have been approved as class counsel in many other
28 wage/hour class actions, and I am currently litigating numerous others. Although not an all-

1 inclusive list, over the years I have prosecuted the following class action matters as lead and/or
2 co-lead counsel, all of which implicated similar law and facts to those associated with this action:

3 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.:
4 30-2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking
5 premium wages for meal period and rest periods and resultant penalties. Class
6 Notice pending.

7 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN
8 DISTRICT- Case No.: 09-cv-0168. Wage and Hour Class action seeking past
9 wages of overtime for mis-classification of insurance claims adjusters employed
10 by Gallagher Bassett, a third party administrator (TPA) in the State of California.
11 Certification granted. Plaintiffs' counsel co-lead counsel. Case settled, Final
12 Approval granted, no objections and funds fully distributed.

13 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-
14 08-04554. Wage and Hour Class Action case seeking past wages for "off the
15 clock", overtime and meal and rest break violations for production workers in the
16 State of California. Plaintiffs' Counsel appointed as Lead Counsel. Case settled,
17 Final Approval granted, no objections and funds fully distributed.

18 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638
19 ODW. Wage and Hour Class Action case seeking past wages for meal and rest
20 period violations for retail employees in the State of California. Plaintiffs' counsel
21 appointed co-lead counsel. Case settled, Final Approval granted, no objections
22 and funds fully distributed.

23 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case
24 No. SACV08-00412. Wage and Hour Class Action case seeking past wages for
25 meal and rest period violations for retail employees in the State of California.
26 Plaintiffs' Counsel appointed as Lead Counsel. Case settled, Final Approval
27 granted, no objections and funds fully distributed.

28 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles

1 County Superior Court, Case No. BC393709. Wage and Hour Class Action
2 seeking past wages for overtime, meal and rest break violations for driver
3 employees in the State of California. Settlement for “binding arbitration.”
4 Arbitration Award for Plaintiff Class. Arbitration Award confirmed. Plaintiffs’
5 counsel, lead trial counsel and class counsel.

6 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County
7 Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past
8 wages for overtime, meal and rest breaks violations for production employees in
9 the State of California. Plaintiffs’ counsel appointed as lead counsel. Case settled,
10 Final Approval granted, no objections and funds fully distributed.

11 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside
12 County Superior Court, Case No. RIC 440630. Wage and Hour Class Action
13 seeking past wages for overtime, meal and rest break violations for production
14 employees in the State of California. Plaintiffs’ counsel appointed as co-lead
15 counsel. Case settled, Final Approval granted, no objections and funds fully
16 distributed.

17 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No.
18 05CC00293. Wage and Hour Class Action seeking past wages for unlawful
19 deductions, meal and rest break violations for restaurant employees in the State of
20 California. Plaintiffs’ counsel appointed as lead counsel. Case settled, Final
21 Approval granted and funds fully distributed.

22 j. *Padron v. Universal Protection Service, et al*, Orange County Superior
23 Court, Case No. 05CC00013. Wage and Hour Class Action seeking past wages
24 for overtime, meal and rest break violations for security officers in the State of
25 California. Plaintiffs’ counsel appointed as co-lead counsel. Case settled, Final
26 Approval granted, no objections and funds fully distributed.

27 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior
28 Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class

1 Action seeking past wages for meal and rest break violations for security officers
2 employed by defendant in the State of California. Plaintiffs' counsel and co-
3 counsel. Case settled, Final Approval granted and funds fully distributed.

4 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior
5 Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages
6 for overtime, meal and rest break violations for housekeepers employed by
7 defendant in the State of California. Plaintiffs' counsel appointed as lead counsel.
8 Case settled, Final Approval granted, no objections and funds fully distributed.

9 m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL
10 DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past
11 wages for meal and rest period violations for non-exempt employees employed by
12 defendant in the state of California. Case settled. Awaiting Preliminary Approval
13 hearing. Plaintiff has petitioned the Court for Lead Counsel.

14 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
15 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past
16 wages for field and branch employees of defendant in the State of California.
17 Plaintiffs' counsel appointed as lead counsel. Case settled and awaiting Final
18 Approval.

19 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case
20 No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
21 employees of defendant in the State of California. Plaintiffs' counsel appointed as
22 lead counsel. Case settled, Final Approval granted, no objections and funds fully
23 distributed.

24 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court,
25 Case No. 07CC01292. Wage and Hour Class Action seeking unpaid overtime,
26 meal and rest break violations for security guards employed by defendant in the
27 State of California. Plaintiffs' counsel appointed as lead counsel. Case settled,
28 Final Approval granted, no objections and funds fully distributed.

1 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.,* Los Angeles
2 Superior Court, Case No. BC411477. Wage and Hour Class Action seeking
3 unpaid meal and rest break violations for production employees employed by
4 defendant in the State of California. Plaintiff counsel appointed as lead counsel.
5 Case settled, Final Approval granted, no objections and funds fully distributed.

6 r. *McMurray v. Dave and Busters, Inc., et al.,* Orange County Superior Court,
7 Case No. 06CC00099. Wage and Hour Class Action seeking past wages for meal
8 and rest break violations for restaurant employees employed by defendant in the
9 State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled,
10 Final Approval granted, no objections and funds fully distributed.

11 s. *Osuna v. DFG Restaurants, Inc., et al.,* Los Angeles Superior Court, Case
12 No. BC 330145. Wage and Hour Class Action seeking past wages of overtime for
13 mis-classification of managers employed by Defendant, DBA Carl's Jrs. in the
14 State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled,
15 Final Approval granted, no objections and funds fully distributed.

16 t. *Burns v. Gymboree Operations, Inc., et al.,* San Francisco Superior Court,
17 Case No. CGC-07-461612. Wage and Hour Class Action seeking past wages for
18 meal and rest break violations for retail employees employed by defendant in the
19 State of California. Plaintiffs' counsel appointed lead counsel. Case settled, Final
20 Approval granted, no objections and funds fully distributed.

21 u. *Willems v. Diedrich Coffee, Inc., et al.,* Orange County Superior Court,
22 Case No. 07CC00015. Wage and Hour Class Action seeking past wages of
23 overtime for mis-classification of managers employed by Defendant in the State of
24 California. Plaintiffs' counsel appointed lead counsel. Case settled, Final
25 Approval granted, no objections and funds fully distributed.

26 v. *Davila, et al. v. Beckman Coulter, Inc., et al.,* Orange County Superior
27 Court, Case No. 07CC01347. Wage and Hour Class Action seeking past wages
28 for overtime, meal and rest break violations for production workers employed by

1 defendant in the State of California. Plaintiffs' counsel appointed lead counsel.
2 Cased settled; final approval granted; no objections and funds fully distributed.
3 w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior
4 Court, Case No. BC387088. Wage and Hour Class Action seeking past wages for
5 overtime, meal and rest period violations for production employees employed by
6 defendant in the State of California. Plaintiff counsel appointed as lead counsel.
7 Case settled, Final Approval granted, no objections and funds fully distributed.

8 27. Here, the Parties' agreement to pay Counsel Fees of \$82,500.00 of the Gross
9 Settlement Amount is reasonable.

10 28. First, the requested fees are justified by the result achieved. Plaintiff's Counsel
11 negotiated a recovery of \$250,000.00 and this result justifies the requested fees equal to 33% of
12 this recovery (\$82,500.00). This percentage is within the standard contingent recovery
13 percentage. Second, the requested fees are justified by the work performed. Finally, Plaintiff's
14 counsel's lodestar far exceeds the amount requested.

15 29. My firm on behalf of Plaintiff and the Allegedly Aggrieved Employees has
16 invested **181.30** documented hours litigating this matter through the date of this declaration for a
17 total lodestar of **\$126,620.00** in fees, broken down as follows: my rate of \$950 per hour x 41.20
18 hours = \$39,140.00; Gregory Mauro's rate of \$850 per hour x 66.90 hours = \$56,865.00; Michael
19 Calvo's rate of \$650 per hour x 35.50 hours = \$23,075.00; and paralegal Melissa Whitson's rate
20 of \$200 x 37.70 hours = \$7,540.00.

21 30. Finally, the award of litigation expenses is based upon the actual expenses incurred
22 by Plaintiff and Plaintiff's Counsel, and were all reasonably necessary to the litigation, and are
23 detailed in **Exhibit 2** attached hereto. Under the Agreement, Plaintiffs' Counsel will be
24 recovering litigation expenses in the total amount of \$6,077.34.

25 31. The California Labor Workforce Development Agency ("LWDA") is being
26 served with a copy of this motion with the Settlement Agreement and Release through the online
27 process as required by Labor Code § 2699(l). This service on the LWDA is verified in the
28 separately filed proof of service.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct. Executed on
September 4, 2024 at Irvine, California.


James R. Hawkins

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Troy Gray (“Plaintiff”) and Defendant Aspire Bakeries LLC fka ARYZTA LLC (“Defendant” or “Aspire Bakeries LLC”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Aspire Bakeries LLC captioned *MARIA ELIAS and TROY GRAY, and on behalf of the general public as private attorneys general, v. ARYZTA, LLC, a California Limited Liability Company, and DOES 1-50, inclusive*, Case No. 30-2020-01141103-CU-OE-CXC initiated on May 27, 2020 and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Allegedly Aggrieved Employee” means all persons who are employed or have been employed as a non-exempt employee by Aspire Bakeries LLC and who worked at Aspire Bakeries LLC’s Stockton Bakery during the Covered Period (“Allegedly Aggrieved Employees”). There were approximately 167 Aggrieved Employees at the time of mediation.
- 1.5. “Allegedly Aggrieved Employee Data” means Allegedly Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Allegedly Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Allegedly Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Allegedly Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Orange.
- 1.8. “Defense Counsel” means Joshua Mizrahi and Graham Lambert of Buchalter, A Professional Corporation.

- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.
- 1.10. “Gross Settlement” means \$250,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay any and all payments contemplated herein, including but not limited to: attorneys’ fees and litigation costs of PAGA counsel, Individual Settlement Payment to Plaintiff Troy Gray, settlement administration fees, and Private Attorneys General Act (“PAGA”) penalties payable to the State of California, including the payment of Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.
- 1.11. “Individual PAGA Payment” means the Allegedly Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Allegedly Aggrieved Employee worked during the PAGA Period.
- 1.12. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Allegedly Aggrieved Employees as Individual PAGA Payments.
- 1.16. “PAGA Counsel” means James R. Hawkins, Gregory Mauro, and Michael Calvo of James R. Hawkins, APC, the attorneys representing Plaintiff in the Action.
- 1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. “PAGA Pay Period” means any Pay Period during which an Allegedly Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.19. “PAGA Period” or “Covered Period” or “Release Period” means July 2, 2019 to the date of approval of the settlement by the Court or the last day of the pay period in

which the number of PAGA Pay Periods exceeds 16,500 by 10% (18,150 PAGA Pay Periods), whichever is earlier.

- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. “PAGA Notice” means Plaintiff’s March 19, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Allegedly Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.
- 1.23. “Plaintiff” means Troy Gray, one of the named plaintiffs in the Action.
- 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel as described in Paragraph 5 below.
- 1.26. “Released Parties” means: Defendant and each of its former and present managers, members, shareholders, owners, officers, directors, employees, insurers, attorneys, representatives, agents, predecessors, successors, assigns, agents, affiliates, parent companies, subsidiaries, and related entities.
- 1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. “Defendant” means named Defendant Aspire Bakeries LLC fka Aryzta LLC.

2. RECITALS.

- 2.1. On May 27, 2020, Plaintiffs Maria Elias and Troy Gray commenced this Action by filing a Complaint alleging a single cause of action for penalties pursuant to Labor Code § 2699, et seq. for violations of Labor Code 201-203, 510, 512, 558, 226, 266.3, 226.7, 266.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and 1198. On June 16, 2022, the Court dismissed Plaintiff Maria Elias from this matter pursuant to Defendant’s Motion for Terminating Sanctions. The Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

- 2.3. On or around December 18, 2023, the Parties attended a full day of mediation before Tripper Ortman, Esq. of Ortman Mediation to resolve the PAGA claim asserted by Plaintiff and came to an agreement in principle.
- 2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery for purposes of mediation, timekeeping and pay records for Plaintiff and the Allegedly Aggrieved Employees.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$250,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Allegedly Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 1/3 which is currently estimated to be \$82,500.00 and PAGA Counsel Litigation Expenses Payment not expected to exceed more than \$21,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
 - 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000.00 except for a showing of good cause and as approved by the Court. To the

extent the Administration Expenses are less or the Court approves payment less than \$5,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To Plaintiff: An Individual Settlement Payment not to exceed \$10,000.00 to Plaintiff for taking on the role of lead Plaintiff, for individual wage and hour claims, and for his full general release of any and all claims against Defendant. If any part of the Individual Settlement Payment is not approved or is reduced by the Court, any amount not approved shall be returned to the Net Settlement Amount.

3.2.4. To the LWDA and Allegedly Aggrieved Employees: PAGA Penalties are currently estimated in the amount of \$131,500.00 and shall be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Allegedly Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Allegedly Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Allegedly Aggrieved Employee's PAGA Period Pay Periods. Allegedly Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. Tax Allocation of Individual PAGA Payments. As this is an action only to recover civil penalties under PAGA, each Allegedly Aggrieved Employee's Individual PAGA Payment shall be allocated as 100% penalties and will be reported on IRS 1099 Forms as necessary. If required by law, the Allegedly Aggrieved Employees shall receive an IRS Form 1099 for the full amount paid to them, which shall be provided by the Administrator. The Parties do not anticipate that Defendant will be responsible for any employer share of payroll taxes based on this allocation, but should there be any employer side taxes due, Defendant shall pay those taxes in addition to the Gross Settlement. Allegedly Aggrieved Employees assume full responsibility and liability for any employee taxes owed on their Individual PAGA Payment.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Allegedly Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 167 Allegedly Aggrieved Employees who worked a total of approximately 16,500 of PAGA Pay Periods as of the date of the mediation.

4.2. Allegedly Aggrieved Employee Data. Within 30 days, Defendant will deliver the Allegedly Aggrieved Employee Data to the Administrator in the form of a Microsoft

Excel spreadsheet. To protect Allegedly Aggrieved Employee' privacy rights, the Administrator must maintain the Allegedly Aggrieved Employee Data in confidence, use the Allegedly Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Allegedly Aggrieved Employee Data to Administrator employees who need access to the Allegedly Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Allegedly Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Allegedly Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Allegedly Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Allegedly Aggrieved Employee Data.

- 4.3. Funding of Gross Settlement. Defendant shall deposit the Gross Settlement by transmitting the funds to the Administrator no later than 30 calendar days after the Effective Date.
- 4.4. Payments from the Gross Settlement. Within 14 days after Defendant funds the Gross Settlement, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Allegedly Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct an Allegedly Aggrieved Employee Address Search for all Allegedly Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Allegedly Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Allegedly Aggrieved Employee whose original check was lost or misplaced, requested by the Allegedly Aggrieved Employee prior to the void date.
 - 4.4.3. For any Allegedly Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property

Fund in the name of the Allegedly Aggrieved Employee. If the Court does not approve of such, the unclaimed funds shall be remitted to an agreed upon cy pres beneficiary.

- 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Allegedly Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff, the Allegedly Aggrieved Employees, and PAGA Counsel will release claims against all Released Parties as follows:

- 5.1 Release by Allegedly Aggrieved Employees: All Allegedly Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice including for penalties pursuant to Labor Code §2699, et seq., including in particular: (1) all PAGA penalties, under any legal theory of liability, for failure to provide meal periods and/or the failure to properly calculate and pay any premiums owed and/or paid pursuant to California *Labor Code* sections 226.7 and 512 and the IWC Wage Orders; (2) all PAGA penalties, under any legal theory of liability, for failure to provide rest periods and/or the failure to properly calculate and pay any premiums owed and/or paid pursuant to California *Labor Code* sections 226.7 and 512 and the IWC Wage Orders; (3) all PAGA penalties, under any legal theory of liability, for the failure to pay minimum wage pursuant to California *Labor Code* sections 510, 1194, 1197, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; (4) all PAGA penalties, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California *Labor Code* sections 510, 1194, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; (5) all PAGA penalties, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed pursuant to California *Labor Code* sections 201-203; (6) all PAGA penalties, under any legal theory of liability, for any penalties of any kind arising from any alleged wage statement violations pursuant to California *Labor Code* sections 226 and 226.3; (7) all PAGA penalties, under any legal theory of liability, for any penalties of any kind arising from any alleged failure to maintain required records pursuant to California *Labor Code* sections 226, 1174, and 1174.5, and the IWC Wage Orders; and (8) all PAGA penalties, under any legal theory of liability, for failure to reimburse reasonable business expenses pursuant to California *Labor Code* section 2802.
- 5.2 Plaintiff's Release: In addition to the release made in Section 5.1, Plaintiff Troy Gray makes the additional following general release of all claims, whether known or

unknown: Plaintiff releases Defendant, and each of its present and former managers, members, shareholders, owners, officers, directors, employees, insurers, attorneys, representatives, agents, predecessors, successors, assigns, agents, affiliates, parent companies, subsidiaries, and relating entities from all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, or regulation arising out of, relating to, or in connection with Plaintiff's employment with Defendant as well as any and all acts or omissions by or on the part of Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as the "General Release.")

With respect to the General Release, Plaintiff stipulates and agrees that, upon the Court's Final Approval of the Settlement, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California *Civil Code*, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Allegedly Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential

conflicts of interest with Allegedly Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and all facts relevant to any actual or potential conflict of interest with Allegedly Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement. PAGA Counsel is responsible for delivering the Court's Motion for Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action Administration to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are 167 Allegedly Aggrieved Employees who worked approximately 16,500 Pay Periods during the PAGA Period. The Release Period shall end on the date of PAGA approval or on the last day of the pay period in which the number of covered Pay Periods exceeds 16,500 by 10% (18,150 Pay Periods).

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant’s defenses. The Settlement, this Agreement and Parties’ willingness to settle the Action will have no bearing on, and will not be

admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Allegedly Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Allegedly Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Allegedly Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

James R. Hawkins, APLC
James R Hawkins
Gregory E. Mauro
Michael Calvo
9880 Research Drive, Suite 200
Irvine, CA 92618

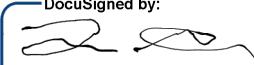
To Defendant:

Buchalter, A Professional Corporation
Josh Mizrahi
Graham Lambert
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017

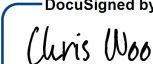
10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DATED: 5/22/2024

DocuSigned by:

By: 34B9F3847F254AF...
PLAINTIFF Troy Gray

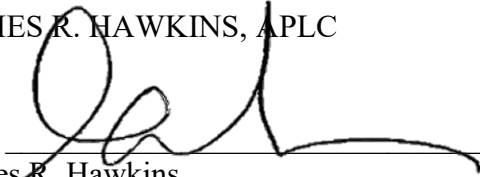
DATED: 5/28/2024

DocuSigned by:

By: DBF909A8C41D4AF...
DEFENDANT ASPIRE BAKERIES LLC

APPROVED AS TO FORM AND CONTENT:

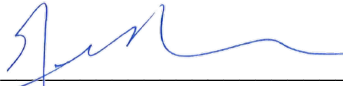
DATED: 5/24/24

JAMES R. HAWKINS, APLC

By: 
James R. Hawkins
Gregory Mauro
Michael Calvo
Attorneys for Plaintiff Troy Gray

DATED: 5/24/24

BUCHALTER, A PROFESSIONAL
CORPORATION

By: 

Joshua Mizrahi
Graham G. Lambert
Attorneys for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 2

Matter Billing Detail

Report Date: 5/15/2024
Report Time: 11:03AM
Page: 1 of 3
User ID: R. Hawkins

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 05/15/2024
Client: RICCO - Maria Stella Elias
Matter: SUVELLANCE004 - Aryzta-PAGA-Maria Elias and Troy Gray

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
06/04/2020	ONE	One Legal Services-Complaint,Civil Case Cover Sheet,Summons -In# 02643373	\$1,494.56		Unbilled				
06/04/2020	FST	First Legal Network- SERVED- Complaint, Summons, Civil Case Cover Sheet IN#30131279	\$142.90		Unbilled				
07/02/2020	ONE	One Legal Services-Amended Complaint,Summons- in# 02693328	\$12.20		Unbilled				
08/19/2020	ONE	One Legal Services-Notice of Related Case #02782833	\$12.20		Unbilled				
08/20/2020	ONE	One Legal Services-Joint Statement-In#02785410	\$12.20		Unbilled				
02/16/2021	CCL	Court Call- Case management Conf for 07/30/2021-MC	\$94.00		Unbilled				
02/16/2021	ONE	One Legal Services-Status Conf Statement-In# 03110333	\$14.25		Unbilled				
05/21/2021	ONE	One Legal Services- Status Conf Statement-In#03303624	\$14.67		Unbilled				
07/21/2021	FED	FED EX- CRS re Contact	\$22.60		Unbilled				
07/30/2021	ONE	One Legal Services-Joint SC Statement-In#03445031	\$116.85		Unbilled				
07/30/2021	ONE	One Legal Services- Notice of Ruling-In#03444114	\$14.67		Unbilled				
07/30/2021	ONE	One Legal Services- Status Conf Statement-in#03442794	\$14.67		Unbilled				
08/18/2021	FED	FED EX Contact letter to the client -Maria Elias	\$22.25		Unbilled				
09/28/2021	POS	Postage - 09.16.2021 Crs to Client re Contact via Certified Mail	\$7.33		Unbilled				
10/27/2021	ONE	One Legal Services-Motion to Be Relieved as Counsel of Record,Decl in Support,Proposed Order In#03625846	\$76.44		Unbilled				
12/02/2021	ONE	One Legal Services- Status Conference Statement- In#03699650	\$14.67		Unbilled				
12/09/2021	CCL	Court Call - 12.09.21 CMC - GEM	\$94.00		Unbilled				

Matter Billing Detail

Report Date: 5/15/2024
 Report Time: 11:03AM
 Page: 2 of 3
 User ID: R. Hawkins

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
12/10/2021	ONE	One Legal Services- Order Granting Atty motion to be Relieved as Counsel- In# 03718215	\$14.67		Unbilled				
12/29/2021	ONE	One Legal Services- Notice of Ruling- in#03752398	\$14.67		Unbilled				
01/06/2022	CCL	Court Call - Hearings; NTC responses	\$94.00		Unbilled				
01/11/2022	CRT	Court Documents- Order	\$7.50		Unbilled				
01/13/2022	ONE	One Legal Services- Proof of Service- In#03785155	\$14.67		Unbilled				
01/20/2022	CRT	Court Documents - 01.09.21 Order Granting Attorney's Mtn to be Relieved; 12.31.21 Minute Order; 01.06.22 Minute Order	\$22.50		Unbilled				
02/28/2022	ONE	One Legal Services-Request for Dismissal- In# 03885920	\$14.67		Unbilled				
03/14/2022	ONE	One Legal Services- Status Conf Statement- in#03923304	\$15.19		Unbilled				
03/17/2022	ONE	One Legal Services- Request for Dismissal without Prejudice -In#03933173	\$15.19		Unbilled				
09/26/2022	ONE	One Legal Services - Joint Statement- In#04397459	\$15.19		Unbilled				
09/27/2022	ONE	One Legal Services - Joint Statement - In#04400894	\$15.19		Unbilled				
01/27/2023	ONE	One Legal Services - Status Conf Statement- In#04706865	\$15.65		Unbilled				
02/01/2023	CRT	Court Documents - 02.01.23 pulling min order off docket	\$7.50		Unbilled				
04/27/2023	ONE	One Legal Services - Status Conf Statement- In#04949821	\$15.65		Unbilled				
07/18/2023	ONE	One Legal Services - Proposed Stipulation and Order In#05156998	\$36.24		Unbilled				
12/18/2023	TE	Travel Expenses - Airfare to and from 12/18/23 mediation- GEM	\$627.80		Unbilled				
12/18/2023	CRT	Court Documents - Complaint (Vallejo v Aryzta)	\$8.50		Unbilled				
12/18/2023	CAR	Transportation Costs - Transportation from Airport to Mediation 12/18/23 -MC & GEM	\$288.00		Unbilled				
12/18/2023	CAR	Transportation Costs - Transportation from Mediation to Airport 12/18/23- MC & GEM	\$288.00		Unbilled				
12/18/2023	TE	Travel Expenses -Airfare to and from 12/18/23 mediation- MC	\$627.80		Unbilled				
12/19/2023	EXA	Expert Analysis IN#231219 CK#11371	\$1,700.00		Unbilled				

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
01/17/2024	ONE	One Legal Services -Proposed Stipulation and Order -In#05651090	\$38.30		Unbilled				
05/02/2024	ONE	One Legal Services - Case management Statement- in#05973743	\$15.39		Unbilled				
Total:			\$6,092.73	\$0.00					
Balance:			\$6,092.73						
Total Fees Billed- -----			\$0.00						
Total Fees Unbilled : -----			\$0.00						
Total Fees Received : -----			\$0.00						
Total Soft Cost Billed : -----			\$0.00						
Total Soft Cost Unbilled : -----			\$0.00						
Total Soft Cost Received : -----			\$0.00						
Total Hard Cost Billed : -----			\$0.00						
Total Hard Cost Unbilled : -----			\$6,092.73						
Total Hard Cost Received : -----			\$0.00						
Total Taxes Billed : -----			\$0.00						
Total Taxes Unbilled : -----			\$0.00						
Total Taxes Received : -----			\$0.00						
Total Late Charges Billed : -----			\$0.00						
Total Late Charges Unbilled: -----			\$0.00						
Total Late Charges Received : -----			\$0.00						
Trust Balance: -----			\$0.00						

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 3



Quotation Request:

Lauren Falk
James Hawkins ALPC
lauren@jameshawkinsaplc.com
949.387.7200

Case Name:

Grey v. Aspire (Arytza)

Date:

Monday, April 1, 2024

RFP Number:

72000028

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	164
Certified Language Translation:	No
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Data Analytics and Standardization

Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
Sub Total:				\$275.00

*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.

Project Management

Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$620.00

Toll-Free Contact Center, Website, Reporting & Pre-Distribution

Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$50.00	1	\$50.00
NCOA Address Update (USPS)	Static Rate	\$41.48	1	\$41.48
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$211.48



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Distribution & Settlement Fund Management				
Settlement Calculations	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (IRS Form 1099 if applicable)	Per Piece	\$1.50	164	\$246.00
USPS First Class Postage	Per Piece	\$0.68	164	\$111.52
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.50	16	\$41.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	5	\$500.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Sub Total:				\$2,668.52

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	2	\$240.00
Sub Total:				\$475.00

WILL NOT EXCEED:				\$4,250.00
------------------	--	--	--	------------

Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. Services: Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. Payment Terms: As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. Incurred Expenses: In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. Invoicing: Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. Case Duration: The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. Termination of Services: Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. Independent Contractor: As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. Limitation of Liability: The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. Indemnification: The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. Confidentiality: Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this confidentiality may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.

14. COMPLETE AGREEMENT. These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. Force Majeure: In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. Severability: This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. Nonwaiver: This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.